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I am pleased to be here with you. I appreciate the opportunity to share some of my thoughts about what the Social Security Administration, the Administration, and the Congress need to do to strengthen the disability determination process in order to better serve those who are disabled and the public at large. I look forward to hearing your views on this important subject as well.

As most of you know, the Board has devoted much attention over the last several years to the problems in the disability system. In the course of our study we have visited administrative law judges in hearing offices across the country. We greatly appreciate the cooperative relationship that we have with the ALJs. You have been very helpful to us in our work.

Our study of disability grows out of our firm belief that SSA's disability programs are a vital but complex part of the nation's social insurance system, needing vigilant attention in order to keep their policy and administrative structures sound and up to date. Today, nearly 139 million workers are insured for Disability Insurance and rely upon this protection in case of serious illness or accident. About 6.6 million people are now receiving Disability Insurance benefits, and nearly 5.3 million disabled and needy adults and children, many of whom would otherwise be living in serious poverty, are receiving SSI disability benefits.

SSA's actuaries project continued rapid growth as the baby boomers reach the age of greater likelihood of disability. In the coming fiscal year, the disability programs are projected to cost about \$96 billion, or 5 percent of the Federal budget.

Processing disability claims is a massive operation that requires a growing portion of the time and attention of SSA staff at all levels. Each year, State disability agencies make initial disability determinations for more than 2 million individuals. About one quarter of these cases are appealed to an administrative law judge. This year about \$5 billion, or two-thirds of the agency's \$7.1 billion administrative budget, will be spent on disability work.

Given the size and projected growth of the disability programs, it is increasingly urgent to step back and reexamine how they are working and whether changes in policies, administrative structure, and resources need to be made.

Many of you no doubt have read the Board's recent report, *Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change*. The title of

the report reflects our conviction that small, incremental changes will not suffice. Nothing less than a comprehensive plan for reform is needed to bring about coherent change.

Although many of the problems of the disability programs are longstanding, they have become magnified as the programs have grown, and new problems have emerged as our economy, the field of medicine, and our institutional structures have evolved. I believe a crisis is looming if fundamental issues remain unaddressed. Today, there are major problems with respect to both the public's faith in these programs and the government's ability to administer them.

There are two primary areas that require urgent attention.

First, in order to sustain public confidence, the public needs to understand and believe that disability decisions are consistent and fair. There is a widely held perception that this is not the case, a perception that is supported by the data that the Board has published that show substantial differences in outcomes over time, among State agencies, and between levels of adjudication.

The issue of whether decisions are consistent and fair is not new, and over the years many factors have been identified as contributing to different outcomes, such as economic and demographic differences among regions of the country, the fact that the claimant has no opportunity to meet with the adjudicator until the face-to-face hearing at the ALJ level, and the record remains open throughout the appeals process.

But we have also been told by many who are knowledgeable about the disability programs – both examiners in the DDSs and administrative law judges – that there are factors within the programs themselves that are responsible for at least some of these inconsistencies. Unfortunately, at the present time SSA has no effective mechanism in place that can provide the information needed to understand the degree to which the agency's own policies and procedures – including their uneven implementation – may contribute to inconsistent outcomes.

Clarifying the issue of horizontal and vertical equity is essential to evaluating the fairness and effectiveness of the decisional structure of the disability programs. This means understanding whether adjudicators in different regions of the country and at different levels of decision making are deciding cases on the basis of uniform policy that is uniformly applied. Clarification is also essential to evaluating the program from the standpoint of the contributors and taxpayers who pay the costs of the program.

Second, disability policy should be coherent, in accord with the intent of Congress, and administrable by all parts of the adjudication process. Although Congress has not changed the law for more than 30 years, the determination of what constitutes disability has changed in fundamental ways with many more cases involving

assessment of function, mental impairment, credibility, and other factors that are often difficult to determine. The effect of these and other changes in policy is that disability decision making has become considerably more subjective and complex, requiring greater skills, training, and time for analysis and decision making than is currently being funded.

In recent decades, disability policy has come to resemble a mosaic of disparate elements, pieced together in response to court decisions and other external pressures rather than the result of a well thought out concept of how the programs should be operating. Compounding the problem, the disability adjudication structure, now nearly a half century old, has been unable to keep pace with the increasing demands that have been imposed upon it. Policy and administrative capacity are dramatically out of alignment in the sense that new and binding rules of adjudication frequently cannot be implemented in a reasonable manner, particularly in view of the resources that are currently available.

These problems need to be addressed forthrightly. They will require bold action by leaders both in the Congress and in the Social Security Administration. Here are the most important.

First, the capacity of SSA to provide appropriate management of the disability programs needs to be greatly enhanced.

Jo Anne Barnhart, the person named by President Bush to become the new Commissioner, has been an active participant in the Board's work and is eminently qualified to lead this effort. The challenge is several-fold.

For many years there has been a lack of accountability and unified direction for these programs. Today, nearly every part of the agency has a role. Their missions and interests differ, and no one other than the Commissioner has the authority to bring them together. The result too often is dissonance and stalemate rather than well thought out and timely action. Organizational changes are needed to ensure strong and consistent management.

Equally urgent is the need to strengthen the expertise of the agency in the area of disability policy. Downsizing and inadequate attention to the need for major new investments in this area have undermined the agency's capacity to provide adjudicators with clear and sustainable policy guidance. SSA needs to develop a single presentation of policy for all adjudicators. To expedite this process we propose that the agency combine the knowledge and experience of employees from both the Office of Disability and the Office of Hearings and Appeals, bringing them together into a single policy unit. If employees from both of these offices participate in writing the agency's policy, it is more likely to take into account the important differences in the perspectives and needs of adjudicators in both State agencies and hearing offices.

The development of sound disability policy requires far greater medical and vocational expertise than the agency currently has. Important medical listings have not been kept up to date to reflect advances in medical diagnosis and treatment and vocational guidelines do not take into account the changes that have occurred in the workplace. SSA has no replacement for the Dictionary of Occupational Titles, which is no longer being updated. This leaves a critical policy vacuum at a time when program rules require more and more decisions to be made on the basis of vocational factors. Without a stronger policy base, the quality of disability decision making cannot be substantially improved, regardless of any procedural or structural changes that may be made. This essential foundation must be provided as quickly as possible.

The agency also needs a new quality management system that will routinely produce the comprehensive program information that policy makers need to guide disability policy and procedures and to ensure accuracy and consistency in decision making. As baby boomers rapidly enter their disability-prone years, it becomes ever more urgent for both policy makers and administrators to have a clear understanding of whether the programs are functioning as intended.

Second, all parts of the disability structure – from top to bottom - need to be strengthened.

This will require changes at every level of the process.

SSA's field offices need to be asked to do a more thorough job of taking claims.

The DDSs need to be given resources that match the requirements that are placed on them and they need to be protected from actions such as State freezes on hiring and salary limitations that can severely inhibit their ability to perform. They are currently being asked to perform tasks they are ill equipped to handle. The very large gap between policy and administrative capacity needs to be resolved at all levels of the process, including in hearing offices.

Changes in the hearings process also need to be made. There are four that are particularly important.

Government representation at the hearing. Given the fact that most clients are now represented, I would like to see the agency represented as well. This would lead to better considered decisions at the DDS level and to a more fully developed record at the hearing level. This representation should also carry forward to the Appeals Council level.

Closing the record. I would also like to see the record closed after a final DDS decision, or in all events, after the ALJ decision is made. Leaving the record open means

a continually changing case and a reduced incentive to bring all evidence to the table at an early stage. Claimants with new information should be able to reapply, but there should be stronger incentives to have all the available evidence submitted as early in the process as possible. The appeal of a case should not be routine, but exceptional based on the likelihood of real error at the DDS level. To this end, I would favor an enhanced reconsideration process at the DDS level with an opportunity for a face-to-face meeting between the claimant and the decision maker.

Changes in rules for claimant representatives. Many ALJs have recommended that there should be new rules for claimant representatives. I believe there should be a system of certification for representation of claimants at all levels, DDS and OHA. Federal rules should regulate representation of claimants. There should also be uniform procedures for these representatives, such as requiring them – absent good cause – to submit all evidence a specified number of days prior to the hearing and to certify that the case is fully developed and ready for hearing. The objective would be to provide for a more orderly and expeditious hearing procedure than currently exists.

Changes in institutional arrangements. Changes in institutional arrangements at the OHA level also need to be considered. The chief judge should be positioned to have direct access to the Commissioner so that important issues will receive high level and timely attention. In addition, I am deeply concerned about the alienation of the administrative law judges from the agency. I understand why this has happened, but I believe it is important for both the agency and the ALJs to consider this issue from the perspective of the public. I encourage the agency to listen far more acutely than it has in the past to the views and ideas of ALJs. Your views are not uniform and in my observation are at times quite disparate. But there is uniformity in the view that the agency has not been listening attentively to your concerns. ALJs need to be an important party to the discussion.

I am also concerned about SSA's relationship with the courts. There are a number of improvements that need to be made in this regard, but first and foremost I think there needs to be a hard look at the merits of establishing a Social Security court. I think this could lessen the problem of differences in decision making and result in more coherent development of policy. It would essentially eliminate the issue of non-acquiescence.

In closing, let me note that we are all here today because we care about public service. Although there are many problems in the current system, it is the job of each of us to try to make it better.

It is important – particularly in light of the challenges that confront our nation as a result of the events of September 11 – to keep the objective in mind. In the case of the disability system, it is to render fair decisions as expeditiously as possible.

I hope we can all work together to devise the policies, the institutional arrangements, and the processes that will produce the results the public expects and deserves.

The Board's studies will continue and we will continue to issue reports stating what we believe needs to be done. We recognize that not everyone will agree with everything that we – or indeed anyone – will have to say. But only an informed dialogue by all concerned can lead us out of the present morass. With good will and persistence, differences in view can be overcome and consensus for needed changes can be reached. We hope you will continue to share your views with us, both in our discussion here today and in the future.